

Ministry of Education and Science of Ukraine

Yaroslav Mudryi National Law University

Department of Civil Law No. 1

S Y L L A B U S

of the academic discipline

“International Contract Law”

Level of higher education - second (master's) degree

Degree of higher education - Master

Field of knowledge - 29 “International relations”

Speciality - 293 “International Law”

Status: compulsory

Year of enrolment - 2022

Kharkiv - 2022

Syllabus of the discipline "International Contract Law" for students of the second (master's) level of higher education in the field of knowledge 29 "International Relations", speciality 293 "International Law". Kharkiv: Yaroslav Mudryi National Law University, 2022. 17 c.

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Approved by the Department of Civil Law No. 1
(Minutes No. 1 of 1 September 2022)

Head of the Department - Valentyna Borysova, PhD in Law, Professor, Corresponding Member of the National Academy of Legal Sciences of Ukraine

Lecturer data

Name of the discipline	International contract law
Status of the discipline	Compulsory
Teacher	Karnaukh Bohdan, Associate Professor of the Department of Civil Law No. 1
Contact phone number	
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Tutorials	According to the schedule of tutorials
Online tutorials	Via the MS Teams platform

Course Overview

The subject of this course is national, transnational (*lex mercatoria*) and international law governing international commercial transactions. The main objective of the course is to develop skills in solving complex legal problems arising from contractual relations in the field of cross-border trade, including through comparative legal research.

The course covers the following topics: determination of applicable law, formation of a contract, validity of a contract, performance of contractual obligations, breach of contract and remedies, etc.

The Aim and objectives of the discipline

1.1. The aim of the discipline is to form a system of scientific knowledge about contract law in its application to international commercial transactions. The focus is mainly on the general part of the law of international commercial contracts. In this regard, such international sources of law as the Principles of European Contract Law (PECL), the UNIDROIT Principles of International Commercial Contracts (PICC), the Common Frame of Reference (CFR) and some others are studied in detail. The course also offers a brief overview of the most commonly used contracts in international commercial practice, such as the contract for the international sale of goods, the

contract for the international carriage of goods and the international financial leasing contract.

Objectives:

- to develop a system of theoretical knowledge about the peculiarities of international commercial contracts as compared to contracts existing exclusively within one national legal order;
- to study the procedure for concluding international commercial contracts;
- to learn the requirements for the validity of international commercial contracts and consequences of non-compliance therewith;
- to gain knowledge of the default rules for the proper performance of international commercial contracts;
- determine the consequences of a breach of international commercial contracts.

Academic discipline in the structure of the educational and professional programme. Interdisciplinary connections

Prerequisites: European Union law and its system; Topical problems of scientific research methodology.

Co-requisites: European private international law; Legal regulation of the EU internal market; WTO law.

Post-requisites: International intellectual property law; EU corporate law and governance; Notary and notarial acts of consular offices.

Expected learning outcomes of a higher education student

As a result of mastering the discipline, a student must demonstrate the following learning outcomes:

- LO -1. To scientifically substantiate one's own position in a dispute arising out of an international commercial contract.
- LO 2. To find alternative solutions to disputes arising from international commercial contracts based on scientific analysis.
- LO 3. To analyse an international agreement (contract) for its validity as a whole and for the validity of its individual terms.
- LO 4. To determine the legal effect of pre-contractual documents.
- LO 5. To know the basics of legal techniques for drafting international commercial agreements (contracts).
- LO 6. To demonstrate understanding of the essence of *lex mercatoria* and its place among other sources of international trade law.
- LO 7. To evaluate the effectiveness of various contractual clauses (clauses) common in international commercial practice.
- LO 8. To apply the basic principles and techniques of interpreting international commercial contracts.
- LO 9. To identify and analyse the latest trends and innovations in the legal regulation of international commercial contracts.
- LO 10. To demonstrate knowledge of the process of convergence of the continental and Anglo-American legal systems in the context of regulation of international commercial contracts.

**Types of classes and independent work
for full-time higher education students**

No. p/n	In-class training (contact)		Independent work (in hours)
	Lecture topics	Topics of seminars	
1	Sources of international trade law	Sources of international trade law	10
2	Formation of a contract in international commercial practice	Formation of a contract in international commercial practice	10
3	Validity of contracts	Validity of contracts	10

4	Contents of the agreement and its interpretation	Contents of the agreement and its interpretation	10
5	Parties to the contract	Parties to the contract	10
6	Execution of the contract	Execution of the contract	10
7	Breach of contract and remedies	Breach of contract and remedies	10
8	Breach of contract and remedies	Breach of contract and remedies	10
9	Contracts for the international carriage of goods	Contracts for the international carriage of goods	10
10	International financial leasing agreements	International financial leasing agreements	10

**Types of classes and independent work
for part-time students of higher education**

No. p/n	Lecture topics	Topics of seminars	Independent work (in hours)
1	Sources of international trade law		138
2	Formation of a contract in international commercial practice	Formation of a contract in international commercial practice	
3	Breach of contract and remedies	Breach of contract and remedies	
4		Contract for the international sale of goods	

Independent work of students

Students' independent work is carried out in the following forms:

- written home tasks;
- mastering theoretical material on the topics of practical classes;
- revision of lecture materials;
- work in information networks;
- studying additional literature;
- case studies;

- essays on highly specialised topics;
- creating a training course portfolio and presenting it;
- writing and presenting essays and reports;
- preparation and publication of scientific articles and abstracts;
- participation in student research and practice conferences;
- compiling a bibliography on the relevant topic;
- summarising court and arbitration practice;
- commenting on sources of international law, as well as the national law of Ukraine and foreign countries;
- writing case studies;
- other forms of work.

Tasks and methodological recommendations for independent work are provided in the Methodological materials for the discipline "International Contract Law" for students of the second (master's) level of higher education in the field of knowledge of the field of knowledge 29 "International Relations", speciality 293 "International Law".

Educational, methodological and informational support of the discipline

Normative and legal acts

1. Common European Sales Law. The Commission's proposal for a regulation (COM(2011) 635 final). URL: <https://www.beuc.eu/sites/default/files/publications/2012-00202-01-e.pdf> (accessed 15.06.2022).
2. Convention on Agency in the International Sale of Goods (Geneva, 17 February 1983). URL: <https://www.unidroit.org/wp-content/uploads/2021/06/agency-convention1983.pdf> (accessed 15.06.2022).
3. Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (The Hague, 1 July 1964). URL:

- <https://www.unidroit.org/english/conventions/1964ulfc/convention-formation-contracts-international-sale-goods1964.pdf> (accessed 15.06.2022).
4. Draft Common Frame of Reference. URL: <https://sakig.pl/wp-content/uploads/2019/01/dfcr.pdf> (accessed 15.06.2022).
 5. Model Clauses for Use by Parties to the UNIDROIT Principles of International Commercial Contracts. URL: <https://www.unidroit.org/instruments/commercial-contracts/upicc-model-clauses/> (accessed 15.06.2022).
 6. Principles of European Contract Law. URL: https://www.trans-lex.org/400200/_pecl/ (accessed 15.06.2022).
 7. UN Convention on Contracts for the International Sale of Goods. URL: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf (accessed 15.06.2022).
 8. UNIDROIT Model Law on Leasing. URL: <https://www.unidroit.org/instruments/leasing/model-law/> (accessed 15.06.2022).
 9. UNIDROIT Principles of International Commercial Contracts (2016). URL: <https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf> (accessed 15.06.2022).
 10. Uniform Rules Concerning Contractual Clauses for an Agreed Amount Due in the Event of Default (1983). URL: https://uncitral.un.org/ru/texts/salegoods/contractualtexts/failure_of_performance (accessed 15.06.2022).
 11. Incoterms. Official Rules for the Interpretation of Trade Terms of the International Chamber of Commerce (2000 edition). URL: https://zakon.rada.gov.ua/laws/show/988_007#Text (accessed 15.06.2022).
 12. United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (New York, 2008) (Rotterdam Rules). URL: https://zakon.rada.gov.ua/laws/show/995_k30#Text (accessed 15.06.2022).

13. UN Convention on the Use of Electronic Communications in International Contracts (New York, 2005). URL:
https://www.un.org/ru/documents/decl_conv/conventions/elect_com.shtml
(accessed 15.06.2022).
14. UN Convention on the Assignment of Receivables in International Trade (New York, 2001). URL:
https://www.un.org/ru/documents/decl_conv/conventions/pdf/debit.pdf
(accessed 15.06.2022).
15. UN Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules). URL: https://zakon.rada.gov.ua/laws/show/995_391#Text (accessed 15.06.2022).
16. Convention on the Contract for the International Carriage of Goods by Road (Geneva, 19 May 1956) (CMR). URL:
https://zakon.rada.gov.ua/laws/show/995_234#Text (accessed 15.06.2022).
17. Convention on International Carriage by Rail (COTIF). URL:
https://zakon.rada.gov.ua/laws/show/994_291#Text (accessed 15.06.2022).
18. Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, 28.05.1999). URL:
https://zakon.rada.gov.ua/laws/show/995_594#Text (accessed 15.06.2022).
19. UNIDROIT Convention on International Financial Leasing:
https://zakon.rada.gov.ua/laws/show/995_263#Text (accessed 15.06.2022).
20. On foreign economic activity: Law of Ukraine No. 959-XII of 16.04.1991. URL: <https://zakon.rada.gov.ua/laws/show/959-12#Text> (accessed 15.06.2022).
21. On private international law: Law of Ukraine No. 2709-IV of 23.06.2005. URL: <https://zakon.rada.gov.ua/laws/show/2709-15#Text> (accessed 15.06.2022).

Literature

Basic literature:

1. Карнаух, Б. Зловживання правом та його правові наслідки. *Підприємництво, господарство і право*. 2020. № 9. С. 31-36.
2. Карнаух, Б. Іноземна валюта в позиковому зобов'язанні. *Проблеми законності*. 2019. Вип. 144. С. 18-32.
3. Карнаух, Б. П. Тлумачення договору: короткий нарис із наднаціональної і транснаціональної точок зору. *Проблеми законності*. 2016. Вип. 135. - С. 39-51.
4. Таш'ян Р.І. Гармонізація законодавства України у сфері недійсності правочинів із законодавством країн ЄС. *Гармонізація приватно-правового законодавства України із законодавством країн ЄС: зб. статей і тез ІХ міжнар. цивілістичного форуму, Харків 11-12 квітня 2019 р. Київ: Знання України, 2019. с. 97-104.*
5. Таш'ян Р.І. Доктрина «culpa in contrahendo» в ученні про недійсність правочинів. *Підприємництво, господарство і право*. 2021 р. № 1. С. 36-40.
6. Таш'ян Р.І. Реституція у цивільному праві країн англо-американської правової системи. *Науковий вісник Міжнародного гуманітарного університету. Серія «Юриспруденція»*. 2017. № 27. С. 60-63
7. Філатова Н.Ю. Порівняльний аналіз особливостей укладення електронних договорів в Україні і Німеччині: правові аспекти. *Правова держава*. 2020. N38. С. 92-99.
8. Bonell M. J. *An International Restatement of Contract Law: The UNIDROIT Principles of International Commercial Contracts*, 3d ed. Leiden: Brill, 2009. 692 pp.
9. Cavalieri R. & Salvatore V. *An Introduction to International Contract Law*. Torino: Giappichelli, 2019. 224 pp.
10. Dimatteo L. A. *International Contracting. Law and Practice*. 3rd ed. Alphen aan den Rijn: Kluwer Law International, 2013. 680 pp.

11. Hutchison A. & Myburgh F. (Eds.). *Research Handbook on International Commercial Contracts*. Cheltenham UK, Norhampton MA USA: Edward Elgar, 2020. 368 pp.
12. McKendrick E. *Contract Law. Text, Cases and Materials*. 10th Ed. Oxford: OXFORD University Press, 2022. 1088 pp.

Further reading:

1. Beheshti R. The Circular Economy and the Implied Terms of Contract in English Sales Law. *Journal of Property, Planning and Environmental Law* (September 20, 2020). URL: <https://ssrn.com/abstract=4138143>.
2. Ben-Shahar O. and Hoffman D.A. and Hwang C. Nonparty Interests in Contract Law (19 February 2022). *University of Chicago Coase-Sandor Institute for Law & Economics Research Paper No. 955*, URL: <https://ssrn.com/abstract=4038584> or <http://dx.doi.org/10.2139/ssrn.4038584>
3. Cafaggi F. and Iamiceli P. The limits of contract laws. The control of contractual power in trade practices and the preservation of freedom of contract within agrifood global supply chains (March 3, 2022). Fernando Gomez Pomar and Ignacio Fernandez Chacon (eds), *Estudios de Derecho Contractual Europeo*, 2022, URL: <https://ssrn.com/abstract=4048571>.
4. Catterwell R. Cognition, Automation and the Future of Contract Law (March 10, 2021). *Australian Contract Law in the 21st Century* (Federation Press 2021), URL: <https://ssrn.com/abstract=4083610>.
5. Cheong, B.C. and Lee, L.L., Rectification of Contracts Arising from Common Mistake: Sun Electric Pte Ltd v Menrva Solutions Pte Ltd [2021] 5 SLR 648 (June 10, 2022). *Singapore Academy of Law Journal* (SACLJ) 2022, URL: <https://ssrn.com/abstract=4139345>
6. Chernykh Y. "International Law and Contract Interpretation." *Contract Interpretation in Investment Treaty Arbitration: A Theory of the Incidental Issue*, Brill,

2022, pp. 111-218. *JSTOR*, URL: <http://www.jstor.org/stable/10.1163/j.ctv2gjww9q.10>.

7. Crespi G.S. What Do Good Lawyers Know that the Rest of Us Don't? Introducing First-Year Law Students to 'Legal Realism' (June 17, 2022). URL: <https://ssrn.com/abstract=4112614>.

8. Dudenko T., Filatova N., Khodyko, I. UNCITRAL Approaches to Regulate Electronic Contracting. Are They Still Applicable? Based on Ukrainian and Other CIS Countries' Experience. *Journal of Advanced Research in Law and Economics*. 2019. v. 10, n. 8, p. 2317 - 2326.

9. Filatova N. Smart contracts from the contract law perspective: outlining new regulatory strategies, *International Journal of Law and Information Technology*, Volume 28, Issue 3, Autumn 2020, Pages 217-242, <https://doi.org/10.1093/ijlit/eaaa015>

10. Grochowski M. Does European Contract Law Need a New Concept of Vulnerability? (August 6, 2021). *Journal of European Consumer and Market Law* (EuCML) 4/2021, <https://tinyurl.com/ybayuj9m>, URL: <https://ssrn.com/abstract=4022734>

11. Hellwege P. "Understanding Usage in International Contract Law Harmonisation." *The American Journal of Comparative Law*, vol. 66, no. 1, 2018, pp. 127-74. *JSTOR*, URL: <https://www.jstor.org/stable/26425380>.

12. Infante R.F.J. and Oliva B.F. Contracts Contrary to Fundamental Principles and Mandatory Rules of European Contract Law (April 2022). *InDret*, Vol. 2, 2022, URL: <https://ssrn.com/abstract=4096658>.

13. Karton J. "The Rise of Sectorally Differentiated Contract Law." *AJIL Unbound*, vol. 111, 2017, pp. 106-11. *JSTOR*, URL: <https://www.jstor.org/stable/27003711>.

14. Kaushal S.S. Consideration in a Contract (April 20, 2022). URL: <https://ssrn.com/abstract=4113411>.

15. Klass G. How to Interpret a Vending Machine: Smart Contracts and Contract Law (10 February 2022). *Georgetown Law Technology Review*, Vol. 7, Forthcoming. *Georgetown Law Faculty Publications and Other Works*. 2433, URL: <https://ssrn.com/abstract=4045711>.
16. Liu Q. and Xiang R. "CISG in Chinese Courts: The Issue of Applicability." *The American Journal of Comparative Law*, vol. 65, no. 4, 2017, pp. 873-918. *JSTOR*, URL: <https://www.jstor.org/stable/26425368>.
17. Lloyd D. Smart Contracts: When Functions May Give Rise to Legally Enforceable Obligations (September 12, 2020). URL: <https://ssrn.com/abstract=4064283>.
18. Marshall B. "The Hague Choice of Law Principles, CISG, and PICC: A Hard Look at a Choice of Soft Law." *The American Journal of Comparative Law*, vol. 66, no. 1, 2018, pp. 175-217. *JSTOR*, URL: <https://www.jstor.org/stable/26425381>.
19. Ottiero L. Good Faith and Pre-Contractual Liability in Commercial Contracts: A Comparative Analysis Between Italian and English Law (May 15, 2022). URL: <https://ssrn.com/abstract=4133511>.
20. Panhard M. "When Contractual Good Faith Meets a Controversial M&A Issue: The Sandbagging Practice in International Arbitration." *The International Lawyer*, vol. 51, no. 1, 2018, pp. 69-86. *JSTOR*, URL: <https://www.jstor.org/stable/26739406>.
21. Papanтониου A. Smart Contracts in the New Era of Contract Law (November 24, 2020). *Digital Law Journal*, 1(4), 8-24. <https://doi.org/10.38044/2686-9136-2020-1-4-8-24>, URL: <https://ssrn.com/abstract=3950988>
22. Peari S. Reviewing Choice of Law in International Contracts (Oxford University Press, 2021) (April 14, 2022). 37 *Banking and Finance Law Review* 391 (2022), URL: <https://ssrn.com/abstract=4083645>
23. Pédamon C. Judicial Interpretation of Commercial Contracts in English and French Law: A Comparative Perspective (December 16, 2021). Pédamon, C (2021) 'Judicial Interpretation of Commercial Contracts in English and French Law: A

Comparative Perspective' *European Business Law Review* 2021 Volume 32 Issue 6 (1093-1124), URL: <https://ssrn.com/abstract=4024322>

24. Rai K. and Sheoran B. Decoding the Moment of Contract Formation: The Juggle between various Theories of Law (2022). (2022) 6 *Journal of Positive School Psychology* 5949, URL: <https://ssrn.com/abstract=4107986>

25. Schuppert G. F., and Rhodes Barrett. "Contract." *A Global History of Ideas in the Language of Law*, vol. 16, Max Planck Institute for Legal History and Legal Theory, 2021, pp. 258-68. *JSTOR*, URL: <http://www.jstor.org/stable/j.ctv1j13z40.18>.

26. Swain W. Contracts 'Not for the Public Good' and the Classical Law of Contract. *The Journal of Legal History*, 2022 Vol. 43, pp. 1-23, URL: <https://ssrn.com/abstract=4073108>.

27. Tashian R. The invalidity of contracts in the field of medical services as a way to protect the rights of the patient // *Wiadomości Lekarskie*. Volume LXXIV, issue 11 part 2, November 2021. P. 3004-3008.

28. Tashian R. Invalid transactions in the private law doctrine // *Entrepreneurship, economy and law*. - 2021 - No. 11. C. 42-47.

29. Tashian R. The classification of invalid transactions into void and voidable in present law doctrine of European countries // *Periodyk Naukowy Akademii Polonijnej*. Czestochowa, Poland. 2021., 46 (2021) № 3. S. 190-194.

30. Tashian, R.I., Karnaukh, B.P. & Dzera, I.O. (2021). Trends in the Development of Property Law: The Civil Law of Ukraine and the Experience of European Union Countries. *Global Journal of Comparative Law*, 10, 91-104.

31. Telles P. and Klingler D. Non-Compliance with Contract Terms: A Comparative View on (Non)regulation and Remedies (April 8, 2022). *Copenhagen Business School, CBS LAW Research Paper* No. 22-03, URL: <https://ssrn.com/abstract=4078881>.

32. Terradas B. A. E-Commerce and Consumer Protection in Integrated Markets. *Diversity and Integration in Private International Law*, edited by Verónica

Ruiz Abou-Nigm and María Blanca Noodt Taquela, Edinburgh University Press, 2019, pp. 231-50. *JSTOR*, URL: <http://www.jstor.org/stable/10.3366/j.ctvrs90px.19>.

33. Wendehorst C. Sale of Goods and Supply of Digital Content - Two Worlds Apart? 2016. URL: <https://ssrn.com/abstract=4096932>.

Internet resources

1. <https://iccwbo.org/>
2. <http://www.unidroit.org/>
3. <http://www.uncitral.org/uncitral/index.html>
4. <http://www.unilex.info/>
5. <https://www.hcch.net/>
6. <https://www.trans-lex.org/>
7. <http://eur-lex.europa.eu/homepage.html>

SEEMC

Standardized electronic educational and methodological complex "International Contract Law". URL: <https://neik.nlu.edu.ua/moodle/course/view.php?id=794>.

Teacher requirements

Students have to: regularly attend lectures and practical classes; systematically and actively work on them; provide convincing arguments when solving problems; perform written assignments, tests and independent work, etc. Seminars missed for valid reasons can be made up by prior agreement with the instructor.

Students are *encouraged to* participate in scientific conferences, competitions of scientific papers, the work of the department's scientific circle, prepare abstracts of scientific reports, etc.

A mandatory requirement is that students comply with **the** Code of Academic

Ethics of Yaroslav Mudryi National Law University
https://nlu.edu.ua/files/norm_doc/kodeks_academichnoyi_etyky.pdf.

During a class, it is allowed to use gadgets for educational purposes only (e.g., to view lecture presentations). Laptops and tablets may be used for taking notes and keeping track of information.

Assessment measures

The assessment of the results of mastering the discipline "International Contract Law" involves current and final assessments and is carried out on the basis of a cumulative point-rating system.

The current assessment of student's knowledge includes:

- assessment of the quality of students' mastering of the programme material of the discipline in seminars using the following means: oral, written or express tests, solving practical problems or tasks, participation in the development of a case, defence of an essay or report on the topics chosen by the student. The current assessment is aimed at checking the student's level of mastering the target material. During a seminar, a student can receive a grade on a four-point scale (0, 3, 4, 5);
- assessment of student's mastery of the programme material of the discipline, which is carried out at the end of the modules in the form of colloquia.

During the semester, students are required to complete independent written work. The maximum grade for this work is 10 points.

The form of the final assessment of knowledge of higher education students in the discipline is an exam. The minimum grade for the results of the current assessment and independent work, with which the student is allowed to take the exam, is 25 points.

The scale of final pedagogical control:

Assessment on the ECTS scale	Description	Grade under the national system of assessment	Grade under 100-grades scale of the YMNLU

A	Excellent - excellent performance, with only a few errors	5	90 - 100
B	Very good - above average with a few errors	4	80 - 89
C	Good - generally correct work with a number of minor errors		75 - 79
D	Satisfactory - not bad, but with a significant number of shortcomings	3	70 - 74
E	Sufficient - performance meets the minimum criteria		60 - 69
FX	Unsatisfactory - you need to work on it before retaking it	2	20 - 59
F	Unsatisfactory - serious further work is required, a repeat course is mandatory		1 - 19